

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is **Personal Matters / Ex. 6** but then **Personal Matters / Ex. 6** so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

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Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

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Thank you,

Karen Gude
Tribal Program Coordinator (detail)
U.S. EPA/Office of Water
Phone: (202) 564-0831

To: Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/24/2017 9:34:54 PM
Subject: RE: draft tribal webinar slides

OK thanks. Do you know who Latosha actually reports to?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Monday, April 24, 2017 5:32 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: draft tribal webinar slides

Thanks. As for attendees, not sure we need too many more, but maybe Steve too.

From: Eisenberg, Mindy
Sent: Monday, April 24, 2017 5:29 PM
To: Goodin, John <Goodin.John@epa.gov>
Subject: draft tribal webinar slides

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Phone: (202) 564-0831

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From: Eisenberg, Mindy
Sent: Mon 4/24/2017 9:29:25 PM
Subject: draft tribal webinar slides
WOTUS2 tribal info and consultation.pptx

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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/24/2017 8:59:44 PM
Subject: Fwd: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting
[image002.gif](#)
[ATT00001.htm](#)
[steve revisions WOTUS-2 Step 1 working preamble for review 4-24.docx](#)
[ATT00002.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: April 24, 2017 at 4:36:37 PM EDT
To: "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Cooper, David R SES USARMY CEHQ (US)" <David.R.Cooper@usace.army.mil>, "Schmauder, Craig R SES (US)" <craig.r.schmauder.civ@mail.mil>
Cc: "Goodin, John" <Goodin.John@epa.gov>, "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "Moyer, Jennifer A CIV USARMY CEHQ (US)" <Jennifer.A.Moyer@usace.army.mil>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>
Subject: RE: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/24/2017 6:32:46 PM
Subject: RE: questions

Thank you!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
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From: Christensen, Damaris
Sent: Monday, April 24, 2017 2:32 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
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Yes and yes

From: Eisenberg, Mindy
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To: Christensen, Damaris <Christensen.Damaris@epa.gov>
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Call-in: Nonresponsive Conference Code/ Ex. 6

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is Personal Matters / Ex. 6 but then I'm Personal Matters / Ex. 6 so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

On February 28, the President issued an Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term "navigable waters," in a manner consistent with the Scalia opinion in Rapanos v. U.S.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia's Rapanos opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

OW plans to initiate tribal consultation as early as this week. The tribal consultation will focus solely on the rulemaking to revise the definition of WOUS consistent with direction provided in the February 28 EO, not on the withdrawal of the current CWR.

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/24/2017 5:30:17 PM
Subject: Fwd: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting
[image001.gif](#)
[ATT00001.htm](#)
[WOTUS-2 Step 1 working preamble 4-20-17 for OGC review 4-21 1145clean.docx](#)
[ATT00002.htm](#)

Here you go!

Sent from my iPhone

Begin forwarded message:

From: "Wehling, Carrie" <Wehling.Carrie@epa.gov>
Date: April 24, 2017 at 1:03:39 PM EDT
To: "Downing, Donna" <Downing.Donna@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Cooper, David R SES USARMY CEHQ (US)" <David.R.Cooper@usace.army.mil>, "Schmauder, Craig R SES (US)" <craig.r.schmauder.civ@mail.mil>
Cc: "Goodin, John" <Goodin.John@epa.gov>, "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "Moyer, Jennifer A CIV USARMY CEHQ (US)" <Jennifer.A.Moyer@usace.army.mil>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Subject: Latest draft of preamble, Step 1 -- for review before tomorrow's meeting

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Sat 4/22/2017 9:48:53 PM
Subject: RE: WOTUS2 outreach overview 4-21-17.docx
[WOTUS2 outreach overview 4-21-17 mge.docx](#)

I think this looks good. Let's look for opportunities to include regions and senior leadership to assist with meetings. You might also want to note how we are going to track all of these meetings/webinars.

Let's plan to share with John to get his take too.

Thanks!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Saturday, April 22, 2017 12:04 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS2 outreach overview 4-21-17.docx

Thoughts? I think this captures most of our discussion today but I'm open for ways of presenting it better. I do think we need to show it by time/date also, but then that doesn't really capture everything either.

It's up on Sharepoint too – my computer will be restarting soon so it's a good reminder to go to bed.

I'm probably not back working till Sunday.

Damaris

To: Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 4/21/2017 1:34:36 PM
Subject: TPs on WOTUS for Enviro and Industry stakeholder meetings

Hi Romell,
Here are TPs for John/Mike. We have also talked with Mike and the politicals about using these standing meetings to solicit feedback on the step two rulemaking, so please ask John if he would like some discussion questions as well.

Thanks

Talking Points on Waters of the U.S.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/18/2017 9:53:47 PM
Subject: Re: WOTUS Federalism Meeting draft materials

Maybe say [Deliberative Process / Ex. 5] and then we can give John some thoughts on how to verbally describe

Sent from my iPhone

On Apr 18, 2017, at 5:47 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Was she ok with

Deliberative Process / Ex. 5

[Deliberative Process / Ex. 5]

From: Eisenberg, Mindy
Sent: Tuesday, April 18, 2017 5:44 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Yes, [Deliberative Process / Ex. 5]

On slide 11, [Deliberative Process / Ex. 5] Can we make it bullets rather than bubbles? Suggest using the text outside of the boxes as your bullets.

Does that work?

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 5:39 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

I need to know – [Deliberative Process / Ex. 5]?

[Deliberative Process / Ex. 5] I saw an email there was discussion of that but no more...

From: Eisenberg, Mindy
Sent: Tuesday, April 18, 2017 5:38 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>
Subject: FW: WOTUS Federalism Meeting draft materials

Hey Damaris,
I have to run and John will only be here for about 10 more minutes, so when you are done with the ppt., please send it to the group on John's email

Thanks!!

Mindy Eisenberg

Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
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1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Tuesday, April 18, 2017 5:36 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Folks—just spoke to Mike and he would like to: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

We will circulate the revised slides shortly.

Thanks

John

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Sent: Tuesday, April 18, 2017 4:38 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Again, this is a policy call so assume OW will make a corporate decision here. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 2:18 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Not sure I understand **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 I agree that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Right?

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 1:32 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
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<image001.jpg>

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1200 Pennsylvania Avenue
Washington, D.C. 20460
Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/18/2017 9:44:20 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Yes, [Deliberative Process / Ex. 5](#)

On slide 11, [Deliberative Process / Ex. 5](#) Can we make it bullets rather than bubbles? Suggest using the text outside of the boxes as your bullets.

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What to do with [Deliberative Process / Ex. 5](#) ? I saw an email there was discussion of that but no more...

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Deliberative Process / Ex. 5

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1200 Pennsylvania Avenue
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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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Damaris

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From: Eisenberg, Mindy
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Subject: FW: WOTUS Federalism Meeting draft materials

Need help

Mindy Eisenberg
Acting Director, Wetlands Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
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eisenberg.mindy@epa.gov

From: Best-Wong, Benita
Sent: Tuesday, April 18, 2017 4:59 PM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Fwd: WOTUS Federalism Meeting draft materials

What do you think? I liked Steve's recommendation because Deliberative Process /attorney client Ex. 5 Have you discussed had the discussion with Greg? I suggest you provide a recommendation to Mike.
Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: April 18, 2017 at 4:38:08 PM EDT
To: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Again, this is a policy call so assume OW will Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 2:18 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Not sure I understand Deliberative Process /attorney client Ex. 5 Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Right?

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 1:32 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

I see greg's as a pretty significant change from mine. This is a policy call, but I was suggesting

Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Again, this is a policy call for OW. I just want to make sure that the differences are apparent so you all can decide what options you would like to be reflected here.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 12:39 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process /attorney client Ex. 5

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460
Damaris

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/18/2017 8:52:33 PM
Subject: comms materials
[draft Basic Talking Points.docx](#)
[draft federalism desk statement \(002\).docx](#)
[Draft WOTUS2 FAQs.docx](#)

I got the OK from Liz Bowman that we can use the TPs, FAQs, and desk statement as needed. She thought they were very well written and had no comments!

Please share with your workgroups.

Thanks!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/18/2017 4:28:41 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Yes, Sarah gave me some feedback.

She didn't like **Deliberative Process / Ex. 5** She asked that we clarify **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 And she wanted us to be more clear on slides 9-11 about what is **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

One overall comment she had was that she **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I also asked her to think about **Deliberative Process / Ex. 5** and she said she would think about it and get back.

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 11:31 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Not to my knowledge – can we check in?

From: Goodin, John
Sent: Tuesday, April 18, 2017 11:03 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Have we heard back from Sarah or Layne yet?

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 10:52 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

I have updated the powerpoint to reflect Steve's edits, below.

Are there any other edits to the agenda, "run of show" or powerpoint I should be aware of? Once we are set I'd like to get some

copies made for tomorrow.

Damaris

From: Neugeboren, Steven

Sent: Tuesday, April 18, 2017 9:57 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>

Subject: RE: WOTUS Federalism Meeting draft materials

Consistent with my suggestions at the meeting today, for your consideration regarding

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 5:29 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>

Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,

Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint. I want to flag slides 9-12 in particular for your review. We are approaching this as:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 so please let me know if you are comfortable.

The powerpoint will be distributed to those on the phone just before the meeting begins, and the conference number will be sent

out on Wednesday. In addition, we will be using an operator assisted number which will require participants to say who they are and their affiliation to try to minimize the chance of uninvited guests attending.

We understand that you had a question about **Deliberative Process / Ex. 5** Here is a statement that we developed with OCIR in case OPA receives requests.

Thanks!
Mindy

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint. I think slides 9-12 are probably the key ones for senior-level review though of course we welcome any changes.

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/18/2017 2:22:50 PM
Subject: powerpoint for federalism
[federalism draft ppt.pptx](#)

Hi Greg,
Here is the draft ppt. Please take a look at slides

| |
|-------------------------------------|
| Deliberative Process / Ex. 5 |
|-------------------------------------|

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort
Importance: Normal
Subject: FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-

Nonresponsive Conference Code/ Ex. 6

Start Date/Time: Tue 4/18/2017 1:00:00 PM
End Date/Time: Tue 4/18/2017 1:45:00 PM
[OW Meeting Request Form econ.docx](#)
[Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx](#)
[Proposed Framework for Economic Analysis one-pager.clean.docx](#)

-----Original Appointment-----

From: Shapiro, Mike
Sent: Thursday, April 13, 2017 2:04 PM
To: Shapiro, Mike; Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; Cindy Barger; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy
Cc: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita; Penman, Crystal
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-866-299-3188 passcode 2025640516
When: Tuesday, April 18, 2017 9:00 AM-9:45 AM (UTC-05:00) Eastern Time (US & Canada).
Where: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

To: Penman, Crystal[Penman.Crystal@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 6:58:12 PM
Subject: RE: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**
[Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx](#)
[Proposed Framework for Economic Analysis one-pager.clean.docx](#)

Here you go

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Penman, Crystal
Sent: Monday, April 17, 2017 11:37 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in 1-
Nonresponsive Conference Code/ Ex. 6

Just a reminder, materials are due nlt 3:00pm today for this meeting. Thank you.

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233
Please call 2025645700 for escort

Start: Tue 4/18/2017 9:00 AM
End: Tue 4/18/2017 9:45 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Shapiro, Mike; Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; 'jennifer.a.moyer@usace.army.mil';

Optional Attendees: 'stacey.m.jensen@usace.army.mil'; David.F.Dale@usace.army.mil;
'cindy.s.barger.civ@mail.mil'; 'douglas.w.lamont2.civ@mail.mil';
'craig.r.schmauder.civ@mail.mil'; Eisenberg, Mindy
Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington,
Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita; Penman, Crystal

Categories: Blue Category

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 5:59:09 PM
Subject: RE: Please make a 1-time change to Donna's CD

Yes that would be helpful

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:59 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Let me know if you need me to call in.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:57 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Should we discuss this on the 2:00 with the Corps today?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:27 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

I think there are a few ways to provide **Deliberative Process / Ex. 5**

My biggest concern about **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If you are okay with that because **Deliberative Process / Ex. 5**, then that's a decision that management is going to have to make.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:16 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Does that mean we should do **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:06 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

My thought on Stacey's comment: **Deliberative Process / Ex. 5** ?

Deliberative Process / Ex. 5

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

I was waiting to hear back from Stacey on her thoughts before distributing, but here is the draft of the **Deliberative Process / Ex. 5** it looks like Stacey has made some comments, but I have not yet reviewed them.

Nonresponsive Internal URL/ Ex. 6

-----Original Message-----

From: Downing, Donna

Sent: Monday, April 17, 2017 12:44 PM

To: Johnson, CynthiaN <Johnson.CynthiaN@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Please make a 1-time change to Donna's CD

Hi Cynthia --

Personal Matters / Ex. 6

Thanks!

Donna

-----Original Message-----

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 12:36 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Subject: RE: A couple of questions and an FYI

Hi Donna,

I'm fine with you

Personal Matters / Ex. 6

For Corps meeting today - I have a couple of quick things. Is there anything rule-related to touch on? I haven't seen **Deliberative Process / Ex. 5** have you? Also, can you remember when they thought they would **Deliberative Process / Ex. 5**

thanks

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna

Sent: Monday, April 17, 2017 12:12 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: A couple of questions and an FYI

Hiya Mindy --

Since you were on the phone when I stuck my head in (twice), I decided it would be less disruptive and more helpful to send you an email with my couple of questions --

-- when is the meeting with Mike this afternoon for the draft run-through Federalism powerpoint? If possible, I'd be very interesting in attending.

-- Are we on with the Corps this afternoon at 2pm?? I don't know of non-WOTUS agenda items, but know you might have some.

Personal Matters / Ex. 6

FYI, I'll be sending an agenda for the Wednesday 10am meeting for your consideration shortly. (First am coordinating with Simma on the preamble).

Thanks for any thoughts you might have!

Donna

-----Original Message-----

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 11:29 AM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: RE: Federalism powerpoint

Hi Simma,

We're going to be meeting with Mike Shapiro this afternoon to run the presentation past him to get feedback and then plan to share with Sarah and others to see what their comfort level is. They seemed to open the door a little on Wednesday evening, so we'll see.

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Message-----

From: Kupchan, Simma

Sent: Monday, April 17, 2017 10:49 AM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: RE: Federalism powerpoint

I think the revised version looks good. Thanks for all of your work on this, Damaris and everyone else.

My only question is about the content of slides 9-11, where we

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Simma Kupchan

Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

-----Original Message-----

From: Christensen, Damaris

Sent: Friday, April 14, 2017 10:09 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>

Subject: Federalism powerpoint

Several sharepoint glitches later, the federalism ppt is up to date. I suggest that this group identify any additional edits by early afternoon Monday, especially focusing on the later (new) slides where I lay out a

Deliberative Process / Ex. 5

By Monday COB we should be ready to forward up, with the understanding that politicals will want to review the slides before the meeting and the earlier they see them the better.

Here's the link.

Nonresponsive Internal URL/ Ex. 6

Also in the federalism folder shortly will be a draft agenda and a draft run of show. You are welcome to peek at early drafts but I'll send a link around after I've had a chance to touch base with Jake Strickler, who is facilitating, on Monday.

Damaris

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]

Sent: Friday, April 14, 2017 5:05 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: Heads up

I'll be sending around a link to review the new content-added federalism PowerPoint in a couple hours.

I'm taking a break to go

Personal Matters / Ex. 6

Damaris

Sent from my iPhone

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 5:57:24 PM
Subject: RE: Please make a 1-time change to Donna's CD

Should we discuss this on the 2:00 with the Corps today?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:27 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

I think there are a few ways to provide **Deliberative Process / Ex. 5**

My biggest concern about **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

If you are okay with that because **Deliberative Process / Ex. 5** then that's a decision that management is going to have to make.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:16 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Does that mean we should do **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

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Sent: Monday, April 17, 2017 1:06 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

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Deliberative Process / Ex. 5

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From: Downing, Donna
Sent: Monday, April 17, 2017 12:44 PM
To: Johnson, CynthiaN <Johnson.CynthiaN@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Hi Cynthia --

Personal Matters / Ex. 6

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 5:16:08 PM
Subject: RE: Please make a 1-time change to Donna's CD

Does that mean we should do

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
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McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 4:29:40 PM
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx
Agenda -- WOTUS 19 April 2017 v2.docx

With attachment

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
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McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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Next week an important focus should be Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Agenda -- WOTUS 19 April 2017 v1.docx

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From: Eisenberg, Mindy
Sent: Mon 4/17/2017 3:12:56 PM
Subject: RE: talking points on CWR
[draft Basic Talking Points.docx](#)

We are currently waiting for comments from OPA on a revised set of talking points. Here is the draft for Mary's reference, but please do not circulate them.

thanks

Mindy Eisenberg
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Subject: FW: talking points on CWR

Do you know whether the attachment reflects the latest talking points? Mary Walker, our Division Director, is giving a talk at the Georgia Water Resources Conference on Wed, and she's likely to get questions on this. Thanks! Tom

From: Zapata, Cesar
Sent: Friday, March 10, 2017 12:27 PM
To: Lincoln, Larry <Lincoln.Larry@epa.gov>; Allenbach, Becky <Allenbach.Becky@epa.gov>; Benante, Joanne <benante.joanne@epa.gov>; Diaz, Denisse <Diaz.Denisse@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Rigger, Don <Rigger.Don@epa.gov>; Thomas, Chris <Thomas.Chris@epa.gov>; Walker, Mary <walker.mary@epa.gov>
Subject: FYI: talking points on CWR

This is FYI. Please don't distribute until we have time to discuss it in our Monday Staff Meeting.

César A. Zapata
Deputy Director, Water Protection Division
United States Environmental Protection Agency, Region 4
Tel: 404-562-9744

From: Balasa, Kate
Sent: Friday, March 10, 2017 12:14 PM
To: Garcia, Bert <Garcia.Bert@epa.gov>; Garcia, David <Garcia.David@epa.gov>; Gratz, Jeff <Gratz.Jeff@epa.gov>; Gullatt, Kristin <Gullatt.Kristin@epa.gov>; Hamjian, Lynne <Hamjian.Lynne@epa.gov>; Henry, Timothy <henry.timothy@epa.gov>; Rigger, Don <Rigger.Don@epa.gov>; Robichaud, Jeffery <Robichaud.Jeffery@epa.gov>; rogers, rick <rogers.rick@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Honker, William <honker.william@epa.gov>; Johnson, Arthur <Johnson.Arthur@epa.gov>; Korleski, Christopher <korleski.christopher@epa.gov>; Laureano, Javier <laureano.javier@epa.gov>; Lueckenhoff, Dominique <Lueckenhoff.Dominique@epa.gov>; O'Connor, Darcy <oconnor.darcy@epa.gov>; Pomponio, John <Pomponio.John@epa.gov>; Psyk, Christine <Psyk.Christine@epa.gov>; Torres, Tomas <Torres.Tomas@epa.gov>; Walker, Mary <walker.mary@epa.gov>
Cc: Bahrman, Sarah <Bahrman.Sarah@epa.gov>; Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Brandt, Peter <Brandt.Peter@epa.gov>; Cote, Mel <Cote.Mel@epa.gov>; Downing, Jane <Downing.Jane@epa.gov>; Powell, Sheri <Powell.Sheri@epa.gov>; Schmit, Ayn <Schmit.Ayn@epa.gov>; Taylor, Jori <taylor.jori@epa.gov>
Subject: FW: talking points on CWR

All,

Please find attached the latest talking points on the Clean Water Rule activities from OW Communications staff. This was also sent out to the Region's PADs.

Thanks,

Kate Balasa
Lead Region Coordinator - Office of Water
U.S. EPA - Region 5
77 W. Jackson Blvd. (W-15J)
Chicago, IL 60604-3590
(312) 886-6027

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/17/2017 12:29:43 PM
Subject: FW: draft documents for your review
[draft WOTUS2 tribal consultation letter.docx](#)

Just a couple of edits from OPA, so we are good to go. Please accept and tweak the dates as appropriate, and then I suggest working with OW to have the letter uploaded into CMS for signature.

Thanks!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Ferguson, Lincoln
Sent: Monday, April 17, 2017 8:13 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: draft documents for your review

Good morning!

I've attached a copy of the letter with a few minor edits, but keeping the formality of the letter.

Only thing I wasn't sure about is the letter says **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Greenwalt, Sarah
Sent: Friday, April 14, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: draft documents for your review

Yes let's do that. Can you forward to him now so he can work on it over the weekend? I think we both believe it should go out as quickly as possible. That way we can get it going first thing on Monday.

I may have mentioned this already, but this one will be auto-penned since the Administrator will be out.

Sent from my iPhone
On Apr 14, 2017, at 5:13 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Would it make sense for Lincoln to take a look on Monday and then we can move it forward?

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290

From: Greenwalt, Sarah
Sent: Friday, April 14, 2017 4:46 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: draft documents for your review

I'm still caught up in Ryan's office. Can we make sure that this letter mirrors the federalism letter w/r/t the Administrator's voice? Including the form stuff is fine, but I want to make sure we're starting from the one that everyone has already approved and then we're adding Tribe specific stuff on top of that.

Sent from my iPhone

On Apr 14, 2017, at 4:03 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Sarah,
I just wanted to touch base to see if you had any comments on the tribal consultation letter. If you are OK with it, we will route it for the Administrator's signature.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
Sent: Wednesday, April 12, 2017 6:27 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: draft documents for your review

As promised, attached are draft frequently asked questions and a desk statement focused on our upcoming federalism consultation. You will note in the FAQs that we have identified additional questions that we may want to prepare answers for but have not as yet. We are also working on a set of standard talking points and plan to send them to you tomorrow.

I'm also attaching the coordination and consultation letter for the Administrator's signature, along with a background section and coordination plan that is a typical attachment for all of EPA's tribal consultations. Please note that since the date of signature is uncertain, there are a few places for dates identified by yellow highlighting and this will need to be updated when a signature date is identified (signature starts the coordination period).

Once you have reviewed the letter and are ready for us to move forward, we will upload it into the correspondence system for the Administrator's signature. After signature, the letter and coordination plan will be emailed out to tribes and also mailed by program staff to a list provided by AEIO.

Thanks!
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

<draft WOTUS2 tribal consultation letter.docx>

<Draft WOTUS2 FAQs.docx>

<draft federalism desk statement (002).docx>

To: Hewitt, Julie[Hewitt.Julie@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Sun 4/16/2017 7:15:46 PM
Subject: RE: Clean versions of econ framework files
[Proposed Framework for Economic Analysis one-pager.clean.docx](#)
[Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx](#)

John,

I made a few edits to the drafts that Julie sent, so please review these.

I made some changes to the schedule because I think we can move faster if everyone agrees.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Hewitt, Julie
Sent: Saturday, April 15, 2017 12:44 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: Clean versions of econ framework files

All the comments I had yesterday have been addressed. However, I did *not* make any edits to reflect Samantha's email at 6pm Friday.

These files are both on Sharepoint as clean versions, though I am attaching copies here so you don't have to get onto SP to review.

Deliberative Process / Ex. 5

Let me know if you need me to do anything else; I am out Monday though available by phone at 202 566-1031. I won't be able to make edits so easily on Monday. And have pockets of unavailability on Sunday.

Thanks,

Julie

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
Cc: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 4/14/2017 9:20:33 PM
Subject: RE: draft documents for your review
[draft WOTUS2 tribal consultation letter.docx](#)

Sounds good.

Lincoln –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

The other point is that once the letter is signed, consultation is formally initiated. If you have any questions, just shoot me an email over the weekend.

Thanks,
Mindy

Mindy Eisenberg
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To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: draft documents for your review

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Mindy Eisenberg
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Sent: Friday, April 14, 2017 4:46 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: draft documents for your review

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Sent from my iPhone

On Apr 14, 2017, at 4:03 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Sarah,

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Thanks,

Mindy

Mindy Eisenberg
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Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Eisenberg, Mindy

Sent: Wednesday, April 12, 2017 6:27 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: Fotouhi, David <fotouhi.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: draft documents for your review

As promised, attached are draft frequently asked questions and a desk statement focused on our upcoming federalism consultation. You will note in the FAQs that we have identified additional questions that we may want to prepare answers for but have not as yet. We are also working on a set of standard talking points and plan to send them to you tomorrow.

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Thanks!

Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290

eisenberg.mindy@epa.gov

<draft WOTUS2 tribal consultation letter.docx>

<Draft WOTUS2 FAQs.docx>

<draft federalism desk statement (002).docx>

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 4/14/2017 8:03:03 PM
Subject: FW: draft documents for your review
[draft WOTUS2 tribal consultation letter.docx](#)
[Draft WOTUS2 FAQs.docx](#)
[draft federalism desk statement \(002\).docx](#)

Hi Sarah,
I just wanted to touch base to see if you had any comments on the tribal consultation letter. If you are OK with it, we will route it for the Administrator's signature.

Thanks,
Mindy

Mindy Eisenberg
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From: Eisenberg, Mindy
Sent: Wednesday, April 12, 2017 6:27 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: draft documents for your review

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Thanks!
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

Office of Water Meeting Request Form

Date Received in OW: _____

OFFICE OF WATER MEETING REQUEST FORM

FOR: Michael Shapiro X Benita Best-Wong optional

Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Rulemaking

Meeting Requested By: Mindy Eisenberg _____ Date: _____

Office Director Approval: _____ Date: _____

Date Staff will be ready for this meeting by: April 17, 2017

Latest date meeting can happen by: April 18, 2017 _____

Time Needed for meeting: 30 Minutes _____ 45 Minutes X 1 Hour _____ Other _____

Purpose of the meeting:

AA decision expected?

Yes X No _____

Provide AA with information?

Yes X No _____

What specifically is to be decided or presented? Why is a meeting needed?

EPA, Army and the Corps will discuss the approach to interacting with OMB for the step 1 rulemaking, and will discuss the overall approach to the economic analysis for the step 2 rule. Staff are seeking feedback on the approach in order to begin work.

Who will attend the meeting?

Mandatory Attendees (Give Full Names as listed in Outlook and Identify Office):

OA – Sarah Greenwalt, Samantha Dravis, William Nickerson, Al McGartland

OGC - David Fotouhi, Steve Neugeboren, Simma Kupchan, Carrie Wehling

OW – John Goodin, Mindy Eisenberg, Julie Hewitt, Todd Doley, Donna Downing

Corps – Jennifer Moyer (Jennifer.A.Moyer@usace.army.mil), Stacey Jensen (Stacey.M.Jensen@usace.army.mil), David Dale (David.F.Dale@usace.army.mil)

Army – Cindy Barger (Cindy.S.Barger.civ@mail.mil), Doug Lamont (douglas.w.lamont2.civ@mail.mil), Craig Schmauder (craig.r.schmauder.civ@mail.mil)

Optional Attendees (Give Full Names as listed in Outlook and Identify Office – please copy your own office's Special Assistant):

OW – Ann Campbell, Greg Peck

OGC – Kevin Minoli

AA/DAA Conference Technology - Please check all that apply:

- **Presentation** (e.g., PowerPoint or video file(s) uploaded to computer) _____
- **Conference Call Line** ☒ **X** _____
- **VTC** _____ [VTC location(s) (i.e., Region and room number) and a VTC contact person(s) must be provided to the OW-IO Schedulers no later than **24 hours in advance** of the meeting. If known at the time the meeting request form is submitted, please provide this information below.]

Conference line to use for phone-in attendees:

_____ Please use: Nonresponsive Conference Code/ Ex. 6 _____

(NOTE: If your meeting will require a conference call line, please request that a conference call number be added to your meeting request form. It is recommended that you request that the OW IO scheduler use the conference call number for the appropriate OW manager being briefed, (i.e. Mike or Benita). If the program office chooses to use different conference call number for the meeting, the meeting POC will be responsible for opening the conference line with the appropriate PIN number.)

Person Providing Agenda for the Meeting:

Name: Mindy Eisenberg **Phone:** 202-566-1290 _____

Person Providing Briefing Material (if any) for the Meeting:

Name: Mindy Eisenberg **Phone:** 202-566-1290 _____

All meeting materials are due in BOTH hard copy and electronic copy no later than 3:00 p.m. the day before the meeting, unless the meeting is scheduled too late to allow this. Please provide one hard copy per OW principal attending.

- Your office's scheduler or SA will email all electronic copies to Crystal Penman and Ann Campbell (for Mike Shapiro) or Crystal Edwards and Ann Campbell (for Benita Best-Wong).
- Deliver hard copies to:
 - Crystal Penman: (3219 WJC East) for Mike Shapiro
 - Crystal Edwards: (3223 WJC for) for Benita Best-Wong

To: Bowman, Liz[Bowman.Liz@epa.gov]
Cc: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 4/13/2017 9:26:04 PM
Subject: draft basic talking points
[draft Basic Talking Points.docx](#)

Hi Liz,

As we discussed during yesterday's 10:00 meeting, we've prepared some basic talking points on the rule. Please let me know if you need anything else or have questions.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Hull, George[Hull.George@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]
From: Eisenberg, Mindy
Sent: Wed 4/12/2017 1:52:12 PM
Subject: federalism letter
[WOTUS Letter.pdf](#)

As discussed. I'll also send you the draft FAQs and desk statement a little later.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Eisenberg, Mindy
Sent: Wed 4/12/2017 12:18:12 AM
Subject: Fwd: For Review - draft materials for 10:00 WOTUS
[Step 1 Rule Draft - 4-11-2017.docx](#)
[ATT00001.htm](#)
[WOTUS2 Comms One-Pager 4-11-17.docx](#)
[ATT00002.htm](#)

Hi Sarah,
Here are two documents for our 10:00. Sorry for getting them to you late. I was on travel today.

Mindy

Sent from my iPhone

Begin forwarded message:

From: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Date: April 11, 2017 at 7:13:48 PM EDT
To: "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Cc: "Peck, Gregory" <Peck.Gregory@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>
Subject: For Review - draft materials for 10:00 WOTUS

Mike and Benita,
Sorry for the late hour. Attached are the latest drafts of the step 1 rule and comms/outreach considerations. We plan to discuss both during the meeting tomorrow, as well as touch on the draft step 1 preamble that we're not quite ready to hand out. Please let me know if you have any comments or concerns, and we will circulate updated versions to the invitees before the meeting.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/11/2017 8:36:05 PM
Subject: Fwd: Rule Materials
[WOTUS2 Comms One-Pager 4-11-17.docx](#)
[ATT00001.htm](#)
[Agenda -- WOTUS 12 April 2017 v2.docx](#)
[ATT00002.htm](#)
[WOTUS2 tribal consultation letter 4-10-17.docx](#)
[ATT00003.htm](#)
[Step 1 Rule Draft - 4-6-2017.docx](#)
[ATT00004.htm](#)
[WOTUS-2 Step 1 drafty outline preamble v1 mge rmk.docx](#)
[ATT00005.htm](#)

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Peck, Gregory" <Peck.Gregory@epa.gov>
Date: April 11, 2017 at 3:31:48 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Goodin, John" <Goodin.John@epa.gov>
Subject: Rule Materials

I keep getting copies of documents that have gone to Army but I don't have yet. Including basic stuff like tomorrow's agenda. Can you help to make sure I'm included on the distribution - thanks.

Greg

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 6:27:56 PM
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Monday, April 10, 2017 2:27 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Eisenberg, Mindy

Sent: Monday, April 10, 2017 12:09 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

See below

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Monday, April 10, 2017 11:09 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: FW: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

From: Muellerleile, Caryn

Sent: Monday, April 10, 2017 10:52 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

From: Evalenko, Sandy

Sent: Monday, April 10, 2017 10:26 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Apr 10, 2017, at 10:01 AM, Muellerleile, Caryn <Muellerleile.Caryn@epa.gov> wrote:

Hello,

Deliberative Process / Ex. 5

Let me know if you have any questions.

Caryn

From: Evalenko, Sandy

Sent: Friday, April 07, 2017 9:25 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandhy

From: Muellerleile, Caryn
Sent: Friday, April 07, 2017 9:22 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hello,

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy
Sent: Friday, April 07, 2017 8:16 AM
To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: Regulatory Agenda FY 2018 Spreadsheet
Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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have
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e will
rtlan

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Owens, Nicole

Sent: Tuesday, April 04, 2017 12:06 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>

Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Griffiths, Charles <Griffiths.Charles@epa.gov>; Morgan, Cynthia <Morgan.Cynthia@epa.gov>

Subject: For Review by COB Wednesday: Regulatory Agenda FY 2018 Spreadsheet

Hello –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 n
em

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 about the economic

Deliberative Process / Ex. 5 11

Thanks for the help,

Nicole

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Donna Downing[Personal Email / Ex. 6]; Goodin, John[Goodin.John@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 5:01:32 PM
Subject: Re: For OWOW review and (if appropriate) sharing with the staff workgroup: Draft Step 1 Preamble sentence outline

Yes I'm good with you posting it so folks can discuss tomorrow.

Sent from my iPhone

On Apr 10, 2017, at 12:59 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

I have an updated version that incorporates Damaris and Mindy's suggested edits plus a few from me. So ... I agree we need this up on Sharepoint but we already have a version problem! I'll go in and re-enter Mindy's and my edits to the Sharepoint version.

Mindy, John, are you OK with me sending a Sharepoint link to the interagency staff group?

Donna

From: Kwok, Rose
Sent: Monday, April 10, 2017 12:54 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Donna Downing <Personal Email / Ex. 6>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: For OWOW review and (if appropriate) sharing with the staff workgroup: Draft Step 1 Preamble sentence outline

I've added this to Sharepoint – and I think that we need to Share what we send around on Sharepoint so that we can get edits/thoughts there. I've added the parts of Damaris' comments that I agree with here – and have commented on the others below.

From: Christensen, Damaris
Sent: Monday, April 10, 2017 10:37 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Donna Downing <Personal Email / Ex. 6>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Re: For OWOW review and (if appropriate) sharing with the staff workgroup: Draft Step 1 Preamble sentence outline

Hey all,

My apologies, I'm working [Personal Matters / Ex. 6] this morning and have been unable to open this document on my computer. Thus I can't see any of Mindy's comments.

I did work from the version she forwarded around, and at a very quick review had the following observations:

Deliberative Process / Ex. 5

- Don't agree with this change – it should actually be **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I think we should

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I see where Damaris is coming from, but if

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I don't agree with

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In practice, I agree with that, but

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

So the plain text is

Deliberative Process / Ex. 5

Just my thought.

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 4:48:27 PM
Subject: RE: quick send of drafts before computer reboot
federalism desk statement_mge.docx
WOTUS2 FAQs 4-9-17_mge.docx

Deliberative Process / Ex. 5

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Sunday, April 09, 2017 9:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: quick send of drafts before computer reboot

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 4:09:21 PM
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

See below

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Monday, April 10, 2017 11:09 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: FW: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

From: Muellerleile, Caryn

Sent: Monday, April 10, 2017 10:52 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

From: Evalenko, Sandy

Sent: Monday, April 10, 2017 10:26 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Apr 10, 2017, at 10:01 AM, Muellerleile, Caryn <Muellerleile.Caryn@epa.gov> wrote:

Hello,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if you have any questions.

Caryn

From: Evalenko, Sandy
Sent: Friday, April 07, 2017 9:25 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandhy

From: Muellerleile, Caryn
Sent: Friday, April 07, 2017 9:22 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hello,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy

Sent: Friday, April 07, 2017 8:16 AM

To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Subject: Regulatory Agenda FY 2018 Spreadsheet

Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Owens, Nicole

Sent: Tuesday, April 04, 2017 12:06 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>

Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Griffiths, Charles <Griffiths.Charles@epa.gov>; Morgan, Cynthia <Morgan.Cynthia@epa.gov>

Subject: For Review by COB Wednesday: Regulatory Agenda FY 2018 Spreadsheet

Hello –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for the help,

Nicole

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 4:05:32 PM
Subject: FW: WOTUS Federalism Meeting
WOTUS Letter.pdf

Can't remember if the 3rd floor north conference room was booked by Brittany or not.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Campbell, Ann
Sent: Monday, April 10, 2017 12:04 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: WOTUS Federalism Meeting

Deliberative Process / Ex. 5

ig
OP and

Thank you,

Ann

From: Threet, Derek

Sent: Monday, April 10, 2017 10:10 AM

To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>

Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>

Subject: RE: WOTUS letter - signature process

Attached is a scanned copy of the signed WOTUS letter.

Please let me know if you have any concerns.

Thanks.

Derek

Derek Jason Threet, Special Assistant

Office of the Administrator (OW, OECA, OCFO, OEI and OIG)

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, N.W.

Washington, D.C. 20004

Telephone: (202) 564-1409

Office Cell Phone: (919) 530-0643

From: Burden, Susan
Sent: Friday, April 07, 2017 4:01 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>
Subject: RE: WOTUS letter - signature process

Hi Lincoln,

Deliberative Process / Ex. 5

Thanks,

Susan

Susan Burden, Ph.D.

Special Assistant (ORD, OCSPP, OCHP, SAB)

Office of the Administrator

U.S. Environmental Protection Agency

Office: (202) 564-6308

Cell: (202) 740-0169

From: Hanson, Andrew

Sent: Friday, April 07, 2017 12:27 PM

To: Burden, Susan <Burden.Susan@epa.gov>

Subject: FW: WOTUS letter - signature process

Deliberative Process / Ex. 5

From: Eisenberg, Mindy

Sent: Friday, April 07, 2017 12:26 PM

To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hanson, Andrew

<Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;

Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne

<bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian

<Hope.Brian@epa.gov>

Subject: RE: WOTUS letter - signature process

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Ferguson, Lincoln

Sent: Friday, April 07, 2017 12:22 PM

To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;

Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine

<Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>

Subject: RE: WOTUS letter - signature process

Deliberative Process / Ex. 5

From: Hanson, Andrew

Sent: Thursday, April 6, 2017 10:08 PM

To: Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;

Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine

<Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln

<ferguson.lincoln@epa.gov>

Subject: Re: WOTUS letter - signature process

Hi John,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

EOn Apr 6, 2017, at 5:41 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks

John

From: Knapp, Kristien

Sent: Thursday, April 06, 2017 5:28 PM

To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>

Subject: WOTUS letter - signature process

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 1:28:34 PM
Subject: FW: Freedom of Information Request
[image001.gif](#)
[ATT00001.htm](#)
[3031 FOIA to EPA 2017.pdf](#)
[ATT00002.htm](#)

FYI

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Best-Wong, Benita
Sent: Friday, April 07, 2017 6:48 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Fwd: Freedom of Information Request

Sent from my iPhone

Begin forwarded message:

From: Janette Brimmer <jbrimmer@earthjustice.org>

Date: April 7, 2017 at 6:29:48 PM EDT

To: "'hq.foia@epa.gov'" <hq.foia@epa.gov>, "'pruitt.scott@epa.gov'" <pruitt.scott@epa.gov>, "'shapiro.michael@epa.gov'" <shapiro.michael@epa.gov>, "'best-wong.benita@epa.gov'" <best-wong.benita@epa.gov>

Cc: "chris@pugetsoundkeeper.org" <chris@pugetsoundkeeper.org>, "Aaron Isherwood (aaron.isherwood@sierraclub.org)" <aaron.isherwood@sierraclub.org>, Cathy Hendrickson <chendrickson@earthjustice.org>, Jennifer Chavez <jchavez@earthjustice.org>

Subject: Freedom of Information Request

Please find attached a Freedom of Information Request on behalf of Earthjustice, Sierra Club and Puget Soundkeeper Alliance. Thank you.

Janette Brimmer

Attorney

Earthjustice Northwest Office

705 2nd Avenue, Suite 203

Seattle, WA 98104

T: 206.343.7340, ext. 1029

F: 206.343.1526

earthjustice.org

To: Donna Downing[donnadowning1@verizon.net]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/10/2017 1:11:23 PM
Subject: RE: For OWOW review and (if appropriate) sharing with the staff workgroup: Draft Step 1 Preamble sentence outline
WOTUS-2 Step 1 drafty outline preamble v1 mge.docx

Deliberative Process / Ex. 5

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Donna Downing [mailto:donnadowning1@verizon.net]

Sent: Sunday, April 09, 2017 11:56 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; mcdavitt.michael@epa.gov

Subject: For OWOW review and (if appropriate) sharing with the staff workgroup: Draft Step 1 Preamble sentence outline

Hi Mindy, John, Mike, Damaris, and Rose –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 ay
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Deliberative Process / Ex. 5 th an

Good night.

Donna

To: Hewitt, Julie[Hewitt.Julie@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 4/7/2017 4:55:46 PM
Subject: heading to signature today
WOTUS Sig ready.4.7.17.pdf

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/4/2017 4:48:55 PM
Subject: RE: review of CWR record

Let's talk later.

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Tuesday, April 04, 2017 12:47 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: review of CWR record

Any value in looking Deliberative Process / Ex. 5 I've done for Deliberative Process / Ex. 5
it might be worth looking at Deliberative Process / Ex. 5

Sounds like this might be enough? Is it worth knowing for presentations and/ or preamble drafting?

Damaris
Sent from my iPhone
On Apr 4, 2017, at 12:43 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Thanks for your good work!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Greenwalt, Sarah
Sent: Tuesday, April 04, 2017 10:26 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: review of CWR record

This is great, Mindy, thank you.

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Personal Phone / Ex. 6

From: Eisenberg, Mindy

Sent: Monday, April 3, 2017 5:04 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: review of CWR record

Hi Sarah,

In response to the Administrator's request for

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

A key conclusion from this

review is that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any questions.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/4/2017 4:43:58 PM
Subject: FW: review of CWR record

Thanks for your good work!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Greenwalt, Sarah
Sent: Tuesday, April 04, 2017 10:26 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: review of CWR record

This is great, Mindy, thank you.

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Personal Phone / Ex. 6
Greenwalt.Sarah@epa.gov

From: Eisenberg, Mindy
Sent: Monday, April 3, 2017 5:04 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: review of CWR record

Hi Sarah,
In response to the Administrator’s request for how Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 A key conclusion from this review is that Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Please let me know if you have any questions.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 4/4/2017 2:41:57 PM
Subject: Fwd: review of CWR record

Sent from my iPhone

Begin forwarded message:

From: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Date: April 4, 2017 at 10:25:41 AM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Subject: RE: review of CWR record

This is great, Mindy, thank you.

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: Personal Phone / Ex. 6
Greenwalt.Sarah@epa.gov

From: Eisenberg, Mindy
Sent: Monday, April 3, 2017 5:04 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: review of CWR record

Hi Sarah,
In response to the Administrator's request for how Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 A key conclusion from this
review is that Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Please let me know if you have any questions.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/3/2017 9:21:16 PM
Subject: FW: letter from NGO's on WOTUS rule
[17-000-6900.pdf](#)

Did Sineta talk to you today?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Monday, April 03, 2017 5:12 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: FW: letter from NGO's on WOTUS rule

FYI

(thanks, Steve)

From: Neugeboren, Steven
Sent: Monday, April 03, 2017 5:09 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: letter from NGO's on WOTUS rule

Ogc has received an fyi on this controlled correspondence and sending to our team and John in case hasn't reached you guys yet.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Veney, Carla
Sent: Monday, April 03, 2017 12:31 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Emailing - 17-000-6900.pdf from OEX

Steve, this was sent to us as an FYI.

To: Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/3/2017 4:57:16 PM
Subject: FW: Draft compilation of record references to Plurality

Thoughts?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Kupchan, Simma
Sent: Monday, April 03, 2017 12:52 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Draft compilation of record references to Plurality

Hi Mindy,

This looks very good. Thanks to you and your staff for compiling. We had no edits.

The only question was whether we want to **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 (Apparently the Administrator repeatedly asked whether **Deliberative Process / Ex. 5** Whether to include such a statement is a policy and judgment call; we defer to you on that. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Thanks,

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Eisenberg, Mindy
Sent: Friday, March 31, 2017 9:54 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; David.F.Dale@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Draft compilation of record references to Plurality

All,
Sarah had asked us to **Deliberative Process / Ex. 5** Attached is a draft document with **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Please let me know if you have any comments by Monday, especially to the introduction. Attaching as well as posting to the sharepoint for edits.

Nonresponsive Internal URL/ Ex. 6

Thanks!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Goodin, John[Goodin.John@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]
From: Eisenberg, Mindy
Sent: Sat 4/1/2017 6:53:27 PM
Subject: RE: WOTUS2 Tribal consultation
Tribal outreach options WOTUS2 3-30-17_mge.docx

Deliberative Process / Ex. 5

thanks

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris

Sent: Thursday, March 30, 2017 5:06 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>

Subject: WOTUS2 Tribal consultation

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Fri 3/31/2017 9:38:09 PM
Subject: FW: WOTUS2: Schedule Updates
[STAFF AGENDA.docx](#)
[Task Management and Tracking.xlsx](#)
[Leadership AGENDA.docx](#)
[CWR Schedule 31Mar17 Condensed.pdf](#)
[CWR Schedule 31Mar17 Expanded.pdf](#)

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Friday, March 31, 2017 5:31 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; David.F.Dale@usace.army.mil
Subject: WOTUS2: Schedule Updates

Hi Donna and Mindy:

Deliberative Process / Ex. 5

Thanks!
Cindy

PRE-DECISIONAL/FOR OFFICIAL USE ONLY/NOT FOR DISTRIBUTION.

Cindy S. Barger
Environmental Planner
Office of the Assistant Secretary of the Army (Civil Works) Project Planning and Review
441 G Street, NW Rm 6R88

Washington, DC 20314
tel: (202) 761-0041
cel: (703)915-8995

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/28/2017 8:58:04 PM
Subject: FW: Input for Mgmt Meetings

For consideration as we meet with states

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: McDavit, Michael W.
Sent: Tuesday, March 28, 2017 2:47 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Input for Mgmt Meetings

Hi Mindy,
Here are some TPs for your use during the 11 am Wed mgmt meeting. Kathy and I thought it would be an especially good idea to raise **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Hope this is helpful.

Michael

W. Michael McDavit, Chief
Wetlands Strategies and State Programs Branch
Office of Water/USEPA (MC 4502T)
1200 Penn. Ave, NW (Room 7303 West Bldg)
Washington, DC 20460
202-566-2465

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/28/2017 4:41:59 PM
Subject: RE: Just uploaded the latest version of the econ to the sharepoint
Proposed Framework for Economic Analysis for New WOTUS Proposed Rule v4 DC.clean (002).docx

Sure!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose
Sent: Tuesday, March 28, 2017 12:41 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: Just uploaded the latest version of the econ to the sharepoint

Mindy, can you please email it me if possible? I'll try to look at it on the plane or during my layover. Thanks

Sent from my iPhone

On Mar 28, 2017, at 9:34 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Please let me know if you don't see it or if you don't have access.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/28/2017 3:06:24 PM
Subject: Fwd: USACE Edits/Comments on draft proposed rule language (UNCLASSIFIED)
Corps 2017 WOTUS 2 Draft Proposed Rule Textv2.docx
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Moyer, Jennifer A CIV USARMY CEHQ (US)" <Jennifer.A.Moyer@usace.army.mil>
Date: March 28, 2017 at 10:12:58 AM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "Cooper, David R SES USARMY CEHQ (US)" <David.R.Cooper@usace.army.mil>, "Dale, David F Jr SES CELRD CELRD (US)" <David.F.Dale@usace.army.mil>, "Cindy S. Barger" <cindy.s.barger.civ@mail.mil>
Subject: USACE Edits/Comments on draft proposed rule language (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Hi Mindy,

Attached are our comments/edits on the most recent version of the draft rule text. I'm thinking we'll be discussing this at 11.

Jennifer

Jennifer Moyer
Chief, Regulatory Program
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
202-761-4598 (office)

Personal Phone / Ex. 6

 (mobile)

CLASSIFICATION: UNCLASSIFIED

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 3/28/2017 2:16:54 PM
Subject: Fwd: USACE Edits/Comments on draft proposed rule language (UNCLASSIFIED)
Corps 2017 WOTUS 2 Draft Proposed Rule Textv2.docx
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Moyer, Jennifer A CIV USARMY CEHQ (US)" <Jennifer.A.Moyer@usace.army.mil>
Date: March 28, 2017 at 10:12:58 AM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, "Cooper, David R SES USARMY CEHQ (US)" <David.R.Cooper@usace.army.mil>, "Dale, David F Jr SES CELRD CELRD (US)" <David.F.Dale@usace.army.mil>, "Cindy S. Barger" <cindy.s.barger.civ@mail.mil>
Subject: USACE Edits/Comments on draft proposed rule language (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Hi Mindy,

Attached are our comments/edits on the most recent version of the draft rule text. I'm thinking we'll be discussing this at 11.

Jennifer

Jennifer Moyer
Chief, Regulatory Program
Headquarters, U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314
202-761-4598 (office)
Personal Phone / Ex. 6 mobile)

CLASSIFICATION: UNCLASSIFIED

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 3/27/2017 11:22:40 PM
Subject: Fwd: discuss draft economics framework for rule
Proposed Framework for Economic Analysis for New WOTUS Proposed Rule v4.clean.docx
ATT00001.htm

FYI. I haven't reviewed yet.

Sent from my iPhone

Begin forwarded message:

From: "Hewitt, Julie" <Hewitt.Julie@epa.gov>
Date: March 27, 2017 at 6:50:49 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "McGartland, Al" <McGartland.Al@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Jensen, Stacey M CIV USARMY HQDA (US)" <Stacey.M.Jensen@usace.army.mil>, Cindy Barger <cindy.s.barger.civ@mail.mil>, "Doley, Todd" <Doley.Todd@epa.gov>, "Massey, Matt" <Massey.Matt@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Guignet, Dennis" <Guignet.Dennis@epa.gov>
Subject: RE: discuss draft economics framework for rule

Thanks to everyone who commented on last week's version; attached is our best effort to address those comments.

Julie Hewitt
Associate Director for Economics
Engineering and Analysis Division
Office of Science & Technology, Office of Water
U.S. Environmental Protection Agency
EPA West Building
1200 Pennsylvania Avenue, N.W.
Room 6233-H and Mail Code 4303T
Washington, DC 20460

(202) 566-1031
(202) 566-1053 fax
Hewitt.Julie@epa.gov
<http://water.epa.gov/scitech/wastetech/guide/>

-----Original Appointment-----

From: Eisenberg, Mindy
Sent: Friday, March 24, 2017 8:42 AM
To: Eisenberg, Mindy; McGartland, Al; Nickerson, William; Jensen, Stacey M CIV USARMY HQDA (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); Hewitt, Julie; Doley, Todd; Massey, Matt; Neugeboren, Steven
Cc: Guignet, Dennis
Subject: discuss draft economics framework for rule
When: Friday, March 24, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: call-in: Nonresponsive Internal URL/ Ex. 6

Purpose is to discuss a proposed framework and baseline for economic analysis in support of new rule. Please forward to anyone else necessary.

thanks

To: Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 3/27/2017 4:58:40 PM
Subject: RE: John - WOTUS on agenda for industry stakeholders meeting (9am Wednesday, 3/29)

Nonresponsive Conference Code/ Ex. 6

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Monday, March 27, 2017 12:44 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: John - WOTUS on agenda for industry stakeholders meeting (9am Wednesday, 3/29)

Deliberative Process / Ex. 5

Note: I would like to request an immediate and permanent change to the call in number for the Wednesday CWR calls—Mindy can we use yours? We routinely have the issue of the same call-in number being used for back to back meetings with outside parties. Please work to have this changed for Wednesday's CWR and all subsequent (and inform Elaine/Crystal, etc.).

Thanks!

John

From: Nandi, Romell

Sent: Monday, March 27, 2017 10:26 AM

To: Goodin, John <Goodin.John@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: John - WOTUS on agenda for industry stakeholders meeting (9am Wednesday, 3/29)

John:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know.

Romell

To: Threet, Derek[Threet.Derek@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 3/27/2017 4:36:24 PM
Subject: RE: WOTUS follow up

Thanks Derek. We dropped it off this morning.

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Threet, Derek
Sent: Monday, March 27, 2017 8:01 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOTUS follow up

Hi Mindy –

Sarah Greenwalt sits in North 3315D.

Thanks.
Derek

From: Campbell, Ann
Sent: Monday, March 27, 2017 6:15 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>
Subject: Fwd: WOTUS follow up

Derek, can you let Mindy know where Sarah Greenwalt sits. We're delivering hard copies to her of the CWR and related report this morning. Thanks!

Begin forwarded message:

From: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Date: March 26, 2017 at 10:23:12 PM EDT
To: "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: RE: WOTUS follow up

If you want us to drop it off for Sarah, where is she sitting?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Campbell, Ann
Sent: Friday, March 24, 2017 5:31 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>

Subject: Re: WOTUS follow up

Yes. Let's plan to follow up with hard copies Monday. Thank you.

On Mar 24, 2017, at 4:58 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Ann,

We'll have to get back to you about the status **Deliberative Process / Ex. 5** I'm sending the link to the connectivity because it seems to be too big to email and I sent the FR w/preamble and rule separately. Can we bring hard copies Monday?

Nonresponsive Internal URL/ Ex. 6

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental
Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Campbell, Ann

Sent: Friday, March 24, 2017 3:36 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Goodin, John <Goodin.John@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>

Subject: WOTUS follow up

Folks, we need to follow up with Sarah and get her copies (e and hard) of the 2015 rule text, the preamble, and the connectivity report.

Also, she asked Mike how we were coming along with s **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Where are we with that?

Thanks!
Ann



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 10, 2017

THE ADMINISTRATOR

Dear Intergovernmental Association Colleague:

I am writing to solicit your input and wisdom on a forthcoming proposal to rescind and revise the definition of waters of the United States (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)).

This action follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The order states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of Congress and the States under the Constitution. It also directs the U.S. Environmental Protection Agency and the Department of the Army to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law. Further, the order directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Consulting with state and local government officials, or their representative national organizations, is a priority to both myself and President Trump. We believe this is an important step in the process prior to proposing regulations that may have implications on federalism as defined by the EPA's policy for implementing the order.

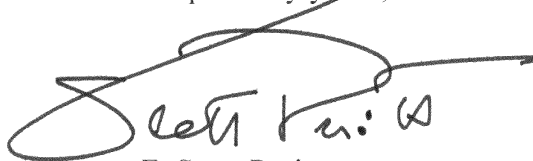
We greatly look forward to the opportunity to sit at the table with our state and local partners from across the country to discuss the rule and develop an approach to address this significant issue while keeping the States at the forefront of our mission.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the 6th Circuit stay of that rule, has been the law in place since 1986, and thus maintains the status quo, and 2) promulgation of a revised definition of waters of the U.S. consistent with direction in the February 28, 2017, E.O. At the upcoming meeting, the EPA will provide brief background information on our process, and you will have the opportunity to provide input, particularly with regard to the charge in the E.O. You and your organizations' members are vital to this process and may also provide written comments after the meeting. I am hopeful you will be able to attend this important discussion and look forward to hearing your thoughts.

The meeting will be on April 19, 2017, from 2:00 – 4:00 pm EDT in Room 3233 of the William Jefferson Clinton East Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The entrance to the Clinton East (formerly EPA East) building is near the intersection of 12th and Constitution.

Please let us know if you will be able to attend by contacting Andrew Hanson in the EPA's Office of Congressional and Intergovernmental Relations at hanson.andrew@epa.gov or (202) 564-3664. If you have questions regarding the rule, you may contact Donna Downing of the Office of Wetlands, Oceans and Watersheds at downing.donna@epa.gov or (202) 566-1367.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, sweeping flourish extending to the right.

E. Scott Pruitt

cc: Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works



March 24, 2017

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OFFICE OF THE
EXECUTIVE SECRETARIAT

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Office of Water
U.S. Environmental Protection Agency
Michael Shapiro, Acting Asst. Administrator
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Office of Water
U.S. Environmental Protection Agency
Benita Best-Wong, Acting Principal Deputy
Asst. Administrator
Mail Code 4501T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

**Re: Waters of the United States; Potential Revisions to Clean Water Rule--
Scientific and Technical Information to be Included in Administrative
Record**

Dear Mr. Pruitt, Mr. Shapiro and Ms. Best-Wong:

This letter is submitted on behalf of Earthjustice, Sierra Club, and Puget Soundkeeper Alliance (the "Conservation Organizations"). On February 28, 2017, President Trump signed an Executive Order directing review and potential revision of the Waters of the United States Rule, 80 Fed. Reg. 37,054 (June 29, 2015) (hereafter the "Clean Water Rule"), instructing that such review and any revision must be in keeping with Justice Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). In news stories that same day and shortly thereafter, Mr. Pruitt vowed to quickly withdraw the Clean Water Rule. Based upon the Executive Order and Mr. Pruitt's statements, the Conservation Organizations assume the directed review and likely withdrawal/revisions to the Clean Water Rule are occurring. This letter is to ensure that a number of scientific, technical, and legal matters are before, and considered by, the U.S. Environmental Protection Agency (the "Agency") and that they are included in the administrative record for the Agency's ultimate decision.

INTRODUCTION

The Federal Water Pollution Control Act (a/k/a the Clean Water Act) is one of our nation's most important and prescient environmental laws. Congress enacted the protections in the Federal Water Pollution Control Act at a time when news reports of horrific pollution incidents highlighted the fact that our waters were in trouble and we could not continue to allow their use as dumping grounds for pollutants without wreaking havoc on entire ecosystems and

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jeopardizing our drinking water, food sources, commerce and recreation. To that end, Congress' stated purpose and intent was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress did not say that only those waters navigable in fact or with a significant nexus would receive those protections. Rather, it defined "navigable waters" generally as "waters of the U.S." 33 U.S.C. § 1362. The Legislative History of the 1972 Federal Water Pollution Control Act further demonstrates that Congress intended broad application of the law and its jurisdictional reach in order to foster the critical protective and remedial purposes of the law. Statements from both House Members and Senators in policy and conference committees made clear that the term "navigable" as used in the Act was not intended to constrain the reach and jurisdiction of the Act to protect against and clean up pollution in all our nation's waters. Members pointedly stated that they were concerned that inclusion of the word "navigable" *not* be read as limiting the Act's application in any way. Rather, their stated intent was for the Federal Water Pollution Control Act to have as broad an application as possible to protect all waters of the U.S. Members noted that the intent was to move away from the constrained notions of jurisdiction, and, in particular, notions regarding navigation, in order to ensure that waters are protected in a full and comprehensive way. *See A Legislative History of the Water Pollution Control Amendments of 1972* (Cong. Res. Serv.), at 178-79, 250-51, 327, 818, 1495.

Further, the Act is plainly a water pollution act, not a law about navigation (in any sense). The Army Corps of Engineers ("COE"), early in the life of the Federal Water Pollution Control Act, made an unsuccessful effort to impose strict navigation constraints on its obligations by construing its jurisdiction very narrowly under the new laws to match its jurisdiction under navigational laws such as the Rivers and Harbors Act of 1899. In *Natural Resources Def. Council v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975), the court soundly rejected the COE's attempt finding that the Federal Water Pollution Control Act dictated a wider sweep in order to address pollutants to the nation's waters.

As EPA research and reporting repeatedly shows year after year, we still have a long way to go in applying the Clean Water Act and meeting its directives and, therefore, attempts to constrain application of the Clean Water Act will be extremely damaging to our nation's waters. Toxics are still discharged into our waters while agricultural discharges are almost wholly unregulated, account for almost half of the pollution entering waterways, and account for a very significant portion of the waters that are currently failing to meet basic standards of cleanliness (including the hypoxia problem in the Gulf and toxic algae blooms in lakes throughout the Midwest). *See, e.g., EPA, Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that for its 2008-09 study well over 50% of the waters assessed exhibited *poor* conditions and only 20% were classified as "good." The results by region were even more disappointing with 62% of the waters in the east classified as poor and 58% in the plains states. (Copy enclosed.)

EPA's summary of states' reported water quality data paints a similarly dismal and apparently worsening picture. States' reported data on EPA's website at https://ofmpub.epa.gov/waters10/attains_index.control#total_assessed_waters, (last visited March 22, 2017) show that states have an extremely poor record of assessing the quality of their

waters with rarely more than one-half of waters assessed and often a small fraction, despite this being an obligation for the last forty years. And, of the waters that states have assessed, 55% of rivers and streams, 71.7% of lakes, and 50% of bays/estuaries are *failing* to meet one or more water quality standards. (These numbers have worsened over the last several years—in 2014 states' reported data had 53% of rivers and streams and 68% of lakes failing to meet standards.) Some regions' numbers are even worse. For example, the Region 6 states (which include Texas and Oklahoma) have assessed only slightly more than 11% of their rivers and streams and of those they report that 60% of them fail to meet basic water quality standards. For lakes in Region 6, 51% have been assessed and over 65% of them are too dirty to meet standards. Data in Region 3 (which includes states such as West Virginia and Pennsylvania) show 37% of lakes have been assessed and 83% of them fail to meet standards. Region 9 (which includes California and Arizona) report that only 24% of rivers and streams have been assessed with 87% of them failing to meet standards, 39% of lakes have been assessed with 87% failing, and 5% of estuaries and bays have been assessed with 98% of those failing to meet basic standards of quality.

Discharges of pollutants into our nation's water have not been eliminated and in many respects are not even controlled. Lake Erie, once a ray of hope for positive change under the Act, has descended once again into a cesspool of algae blooms and dead fish due to unabated and increasing nutrient runoff from farms and development. *See* reporting regarding City of Toledo's closure of water supply due to toxic algal blooms and extent of toxic bloom for 2014, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," NEW YORK TIMES, August 4, 2014; "Lake Erie's Algae Explosion Blamed on Farmers," CBC News, August 7, 2014. The City of Des Moines, Iowa has tried, unsuccessfully, to address the skyrocketing expense of removing nitrates from the city's drinking water that is coming from upstream pollution sources. <http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/03/22/lawsuits-real-losers-iowans-suffering-dirty-water/99501730/> (DES MOINES REGISTER, March 22, 2017).

The news is not better for wetlands, which are critical to groundwater recharge, controlling flooding, cleansing waters, and providing important habitat. Development and agriculture continue to decimate wetlands. In the latest comprehensive reports, agencies reported that we had lost over 50% of our wetlands nationwide; but in parts of the Midwest and coastal areas the figure is as high as 90% or more with attendant disastrous results for clean water. *See*, e.g., EPA Wetland Status & Trends, water.epa.gov/type/wetlands/vital_status.cfm and (copy enclosed); Dahl, T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior, at 16 and 89-90 (2011) (copy enclosed). While the USFWS reports the *rate* of wetland loss has slowed, losses still outdistance gains as recently as 2009, the last year USFWS reported. *Id.* This holds true in USFWS' status and trends report for coastal wetland as well, where it is reported that the nation continues to suffer a net loss of coastal wetlands (copy enclosed). And even when wetland acres are not lost, they are often degraded, losing functions and values as wildlife habitat, natural flood control and natural water quality control. Development also continues to contribute to stormwater runoff and hugely-altered hydrographs and erosion by eliminating wetlands and natural riparian areas and covering the landscape with impervious surfaces, pouring toxic chemicals and fertilizer into natural

streams and triggering extreme erosion.¹ Plainly, the protections of the Federal Water Pollution Control Act are still needed on a broad scale as we are very far from reaching its goals and directives. The greatest and most sustainable Clean Water Act success stories are directly attributable to strict application of the Act's controls.

DOCUMENTS TO BE PLACED IN THE RECORD UNDERLYING THE AGENCY'S
REVIEW AND ANY REVISION OR WITHDRAWAL OF THE CLEAN WATER RULE

As the Agency proceeds with its work under the direction of the Executive Order, it is critical that the Agency consider the wealth of information outlined above and already developed by the Agency and the COE in the years of study and in the development of the Clean Water Rule. In the work to develop the Clean Water Rule, the Agency and COE consulted with the nation's top scientists on topics such as hydrology, geology, stream morphology, wetlands, and aquatic biology. The Agency's and CEO's consultation with the scientists helped to ensure the broadest and best protections for waters of the U.S. in keeping with the Supreme Court's and many Circuit Court's direction to include waters in "significant nexus" with larger downstream rivers. This makes both scientific and legal sense in that waters are not static on the landscape, and to protect the waters of the U.S. requires an understanding and protection of all waters in connection with larger waters—chemically, physically, and biologically – as directed by Congress in the Act itself. The Conservation Organizations therefore refer you to, at a minimum, the documents referenced herein and below, and call upon you to ensure that they are part of the record of your actions under the Executive Order and any action taken to review, reconsider, withdraw, affirm, amend, or replace the Clean Water Rule. We enclose a copy of each of these documents with this letter for inclusion in the administrative record:²

- A. EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013);
- B. EPA, *Nat'l Rivers and Streams Assessment Technical Report* (Mar. 2016);
- C. EPA, *Nat'l Rivers and Streams Assessment Fact Sheet*;
- D. EPA, *National Wetland Condition Assessment* (2011);
- E. Dahl T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2011);

¹ It must also be noted that the proposed budget blueprint attacks funding for voluntary cleanup measures across the country, meaning that only through Clean Water Act regulation will improvements be made.

² The Conservation Organizations also assume that citations to the Agency's own databases and information reported by the states regarding status of waters, cited above, is part of the record for the actions described related to the Clean Water Rule.

- F. Dahl T.E., *Status & Trends of Wetlands in the Coastal Watersheds of the Coterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2013);
- G. EPA and COE, *Connectivity Report, preliminary for external review*, (2014);
- H. EPA and COE, *Connectivity Report (final)* (Jan. 2015);
- I. *Preliminary comments from individual members of the SAB Panel on Connectivity Report* (Aug. 2014);
- J. *Letter from SAB to EPA on Connectivity Panel Activity and Report* (Sept. 2014);
and
- K. EPA, *Technical Support Document in Support of Clean Water Rule* (May 2015).

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,



Janette K. Brimmer

Jennifer Chavez

Earthjustice

And on behalf of Sierra Club and Puget Soundkeeper Alliance

Enclosures

cc: Aaron Isherwood, Sierra Club (w/o encls.)
Chris Wilke, Puget Soundkeeper Alliance (w/o encls.)